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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 6138 70-5045

DONALD and EDNA LINDSEY et al,

Appellants,

v.

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah, all persons similarly situated holding office as Judges of the District Court of the State of Oregon for the County of Multnomah, C. N. CHRISTIANSEN, individually and in his capacity as Director of the Bureau of Buildings of the City of Portland, Oregon, and C. C. CRANK, individually and in his capacity as Director of Building Inspections of the City of Portland, Oregon,

Appellees.

On Appeal from the United States District Court for the District of Oregon

MOTION OF APPELLEE NORMET TO DISMISS OR IN THE ALTERNATIVE AFFIRM

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In the Supreme Court
of the United States

OCTOBER TERM, 1971

No. 6158

DONALD and EDNA LINDSEY et al,

Appellants,

v.

DOROTHEA M. NORMET, THE HONORABLE WILLIAM C. BEERS, in his capacity as Judge of the District Court of the State of Oregon for the County of Multnomah, all persons similarly situated holding office as Judges of the District Court of the State of Oregon for the County of Multnomah, C. N. CHRISTIANSEN, individually and in his capacity as Director of the Bureau of Buildings of the City of Portland, Oregon, and C. C. CRANK, individually and in his capacity as Director of Building Inspections of the City of Portland, Oregon,

Appellees.

On Appeal from the United States District Court for the District of Oregon

MOTION OF APPELLEE NORMET TO DISMISS OR IN THE ALTERNATIVE AFFIRM

Appellee Dorothea M. Normet, hereinafter called "Appellee," moves this Court to dismiss this appeal on the ground that this Court does not have jurisdiction of this appeal. In the alternative appellee moves this Court to affirm the judgment of the District Court

below on the ground that the questions presented are so unsubstantial as not to warrant oral argument and further consideration by this Court.

STATUTES INVOLVED

The statutes involved are the Forcible Entry and Wrongful Detainer statutes of the State of Oregon, Or. Rev. Stat. §§ 105.105-.160 which are set forth verbatim as Appendix "A" to this motion.

QUESTIONS PRESENTED

Motion to Dismiss

Has this Court jurisdiction of the appeal where appellants did not serve their notice of appeal upon all of the parties to the proceedings in the Court where the judgment appealed from was issued?

Motion to Affirm

1. Is this appeal so unusually important that this Court should consider appellants' contention raised here for the first time, that Or. Rev. Stat. §§ 105.105-.160 violate the Ninth and Tenth Amendments to the U. S. Constitution, and, if so, do the statutes violate the Ninth and Tenth Amendments?

2. By providing landlords with the remedy set forth in Or. Rev. Stat. §§ 105.105-.160, has the State of Oregon created an unreasonable distinction and

classification which violates the Equal Protection clause of the Fourteenth Amendment to the U. S. Constitution?

3. Are the minimum allegations required by Or. Rev. Stat. § 105.125(3) and (4) so unreasonably vague and is the time period prescribed by Or. Rev. Stat. §§ 105.135 and .140 so unreasonably short that appellants are deprived of the adequate notice and opportunity to defend guaranteed by the Due Process clauses of the Fifth and Fourteenth Amendments to the U. S. Constitution?

4. Does Or. Rev. Stat. § 105.160 by requiring on appeal an undertaking of twice the rental value of the real property deprive appellants of the Due Process guaranteed by the Fifth and Fourteenth Amendments to the U. S. Constitution?

STATEMENT OF THE CASE

All the facts of the case were agreed to and set forth in the Pretrial Order (R. 150-153). The agreed facts are as follows:

Appellee's father was the legal owner of a single family residence, and sold the residence to Bernice Reed under a contract sale, retaining legal title only to secure purchaser's performance of the contract. Upon the death of appellee's father, appellee became the owner of the seller's interest in the contract and holder of the legal title to the residence to secure purchaser's performance of the contract. Bernice Reed

had assigned her contract purchaser's interest to Jim Hines, who rented the residence to appellants. Appellants are month to month tenants, and their tenancy can be terminated by either party by 30 days prior written notice to the other party.[1] Appellants paid in advance $100.00 per month as rent for the residence.

Hines failed to make a number of the payments due appellee under the contract of sale, and appellee thereafter collected the rent payments from the appellants, and credited the amounts received on the unpaid balance owing from Hines under the contract sale. Even after crediting such amounts, Hines was in default under the contract.

As a result of a complaint made in behalf of the appellants, the Bureau of Buildings of the City of Portland, Oregon, inspected the residence and declared that certain conditions existing in the residence violated the Housing Code of the City of Portland. The Bureau ordered the owner and occupants to vacate the residence within 30 days, or show cause why the residence should not be vacated. Appellants requested appellee to make the required repairs, and appellee made certain repairs. However, appellee did not make any repairs requiring substantial expenditures due to the condition of the title to the residence. Appellants did not vacate the residence as directed by the Bureau of Buildings, and thereafter refused to pay the rent as it became due.

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[1] See Or. Rev. Stat. § 91.070.

Appellee advised appellants that they must vacate the residence in compliance with the order of the Bureau of Buildings of the City of Portland. Appellants did not vacate the residence, contended that they were threatened with eviction, and filed this case in the U. S. District Court for the District of Oregon seeking a declaration that Or. Rev. Stat. §§ 105.105-.160 are unconstitutional, and an order enjoining appellee, the Judges of the District Court of the State of Oregon for the County of Multnomah, C. N. Christiansen, the Director of the Bureau of Buildings and C. C. Crank, the Director of Building Inspections of the City of Portland, Oregon, from evicting appellants from the residence. Appellee has not filed against appellants any eviction action under Or. Rev. Stat. §§ 105.105-.160. However, the appellee filed a suit to foreclose the contract of sale and, in addition to naming as a defendant the contract purchaser Hines, named as defendant the appellants by reason of their possession of the residence as month to month tenants.

The State of Oregon has not as yet enacted a statute allowing a tenant to withhold the payment of rent as a means of compelling a landlord to perform repairs to rented premises.

A three judge district court was convened under 28 U.S.C. § 2281. The case was submitted to the Court upon a stipulation of all material facts and upon the issues set forth in the Pretrial Order. The Court issued its opinion and judgment declaring that Oregon's eviction statutes, Or. Rev. Stat. § 105.105-

.160, are constitutional, vacating the temporary restraining order issued during the pendency of the case, and dismissing the action. Appellants filed a Notice of Appeal to this Court from the above opinion and judgment and from an intermediate order of the Court dismissing the case as to C. N. Christiansen, individually and in his capacity as Director of the Bureau of Buildings of the City of Portland, Oregon, and C. C. Crank, individually and in his capacity as Director of Building Inspections of the City of Portland, Oregon.

ARGUMENT ON MOTION TO DISMISS

This appeal should be dismissed because it was not taken in conformity with Rules 10 and 11, and is therefore not within the jurisdiction of this Court. Rule 10, part 2 requires that the notice of appeal be served on all parties to the proceeding in the court where the judgment appealed from was issued, and that proof of such service be filed with the notice of appeal. Rule 11 requires the filing of the notice of appeal prescribed by Rule 10.

The Honorable William C. Beers, Judge of the District Court of the State of Oregon, for the County of Multnomah, C. N. Christiansen, individually and in his capacity as Director of the Bureau of Buildings of the City of Portland, Oregon, and C. C. Crank, individually and in his capacity as Director of Building Inspection of the City of Portland, Oregon, were each parties to the proceeding in the court where the

judgment appealed from was issued. Appellants have not served their notice of appeal upon any of the above parties nor filed proof of such service.

All three of the parties are necessary to this appeal. Appellants are seeking an injunction against the Honorable William C. Beers, and other judges similarly situated, prohibiting them from entering any judgment of restitution or any order of execution against the appellants. Appellants also seek an injunction enjoining C. N. Christiansen and C. C. Crank from evicting them for the reason that the residence violates certain provisions of the Housing Code of the City of Portland. In their notice of appeal, appellants appealed from the order of the District Court dismissing these two defendants.

Rule 10, part 4 provides an alternate procedure where the appellant feels that certain of the parties in the proceeding in the court where the judgment appealed from was issued have no interest in the outcome of the appeal. The procedure outlined provides for notice to such uninterested parties so that they may participate in the appeal if they wish to do so. Appellants apparently have not complied with this requirement either.

Compliance with Rules 10 and 11 should be jurisdictional, and failure to comply therewith should result in a dismissal of the appeal.[2]

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[2] See *Taggart* v. *New York*, 392 U.S. 667 (1968); *Wilson* v. *Kiesel*, 164 U.S. 248 (1896).

ARGUMENT ON MOTION TO AFFIRM

The final judgment of the District Court below should be affirmed on the ground that the questions presented are so unsubstantial as not to warrant oral argument and further consideration by this Court.

1. Or. Rev. Stat. Sections 105.105-.160 do not violate the Ninth and Tenth Amendments.

For the first time in this case, appellants assert that Oregon's eviction statutes violate the Ninth and Tenth Amendments to the U. S. Constitution. Appellants cannot, in this appeal, assert that the Oregon eviction statutes violate the Ninth and Tenth Amendments when they did not raise such contended violations in the proceeding below. *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365 (1967), cited by appellants does not apply here. In the *Schwinn* case this Court noted that changes in theory asserted for the first time on appeal to this Court are not regarded favorably, and are rejected except in cases of unusual importance.[3] This case is clearly not of such unusual importance.

Appellants apparently contend that Oregon's eviction statutes violate the Ninth and Tenth Amendments because a tenant is not permitted to raise any defenses in an eviction action. Appellants' premise is incorrect and is not supported by any evidence. The Oregon Courts do permit a tenant to raise relevant

[3] 388 U.S. at 371.

defenses, and the defenses are not limited to the title questions.[4] In an eviction action, where the defense is not one that can be heard by a district court, the court will transfer the case to the circuit court.[5]

Since appellee has not commenced an eviction action against appellants, there is no evidence as to which of appellants' defenses would be permitted by the Oregon courts. To assume that the Oregon courts would hold that appellants' defenses are or are not relevant defenses is mere speculation.

Oregon has not as yet enacted a statute permitting tenants to withhold payment of rent to compel landlords to repair housing code violations existing in rented dwellings, nor have the Oregon courts imposed upon landlords an implied warranty of habitability. The Oregon courts might therefore hold that the fact that the rented premises violates a housing code is not relevant in an eviction action. Even so, the U. S. Constitution does not require that a state must

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[4] See *Friedenthal* v. *Thompson*, 146 Or. 640, 31 P.2d 643 (1934) (reformation of written lease); *Share* v. *Williams*, 204 Or. 664, 277 P.2d 775, 285 P.2d 523 (1955) (defendants asserted rights under agreement cancelling contract of sale of property from plaintiff); *Leathers* v. *Peterson*, 195 Or. 62, 244 P.2d 619 (1952) (deed of property from defendant to plaintiff was intended as a mortgage and defendant was the owner of the property); *Priester* v. *Thrall*, 229 Or. 184, 349 P.2d 866, 365 P.2d 1050 (1961) (plaintiffs held legal title to real property as trustees for defendants who held an equitable interest in the property). See also *Wright* v. *Bauman*, 259 Or. 410, 413-5, 398 P.2d 119 (1965) (leases and rental agreements interpreted contractual agreements with dependent obligations).

[5] *Priester* v. *Thrall*, 229 Or. 184, 190, 349 P.2d 866, 365 P.2d 1050 (1961).

by legislative or judicial action allow tenants to raise housing code violations as defenses in eviction actions. *Javins* v. *First National Realty Corp.*, 39 U.S. L. Week 3224 (U.S. Nov. 23, 1970) and other cases cited by appellants do not establish such a constitutional requirement. The *Javins* case is also distinguishable from this case since the tenants held the property under a written lease. Appellants here occupy appellee's residence under a month to month tenancy. A month to month tenancy may be terminated by either party upon 30 days' prior written notice to the other party.[6] Where a landlord and tenant have not entered into a lease and have created only a month to month tenancy, there is no constitutional requirement that the tenant must be permitted to remain in possession of the property while suing the landlord for failure to comply with housing codes, without posting security for the payment of rent accruing during the pendency of the action.

To the contrary, the Tenth Amendment reserves to the states powers which the Constitution does not delegate to the United States nor prohibit to the states. The right to legislate regarding the right to possession of real property and the form of legal proceedings in connection therewith is clearly within the scope of the powers reserved to the states by the Tenth Amendment. The State of Oregon has by legislative action declared that a landlord is entitled to possession of his real property during the pendency of disputes arising

[6] See Or. Rev. Stat. § 91.070.

between him and his tenant, unless the tenant posts with the court security for the payment of the rent accruing during the pendency of the action.

Appellants also base their contention upon the incorrect premise that the City of Portland does not enforce its Housing Code. There is no evidence in this case that the City of Portland does not enforce its Housing Code. The code authorizes the Director of Building Inspections to determine violations of the code, and order that the conditions be corrected to comply with the code or the residence vacated. The Director is also authorized to enforce the penal provisions of the code, and order the residence condemned and demolished.[7] The evidence in this case is that the Building Inspection Department of the City of Portland inspected the residence occupied by appellants, found that the residence violated the Housing Code, and ordered the violations corrected or the residence vacated within 30 days. Since the violations were not corrected, appellants would have been required to vacate the residence had they not filed this suit and joined as defendants the Directors of the Bureau of Buildings and Building Inspections of the City of Portland, Oregon, the departments responsible for the enforcement of the Housing Code. It does not follow that just because the Oregon courts might not allow a tenant to raise violations of the Housing Code as a defense in an action to evict the tenant, the City

[7] Code of the City of Portland, §§ 14.04.010, 14.08.010, 29.04.010-.090, and 29.28.010, appended hereto as appendix "B," (Appendix page 27).

of Portland does not provide meaningful enforcement of the Code.

The enforcement of Portland's Housing Code is meaningful since a landlord will generally repair code violations rather than have the residence stand vacant or be subject to a fine and imprisonment. If it is not economical to make the required repairs, the city will require that the residence be demolished.

Retaliatory eviction is not involved in this case, and was not raised by the appellants in the proceeding below, nor considered by the court. Appellee has not attempted to evict appellants from her residence because appellants requested that the Bureau of Buildings of the City of Portland inspect the residence for violations of the Housing Code. Rather, appellee was seeking to foreclose her contract of sale of the residence to Hines due to defaults in the payments due thereunder. Appellants were named defendants in the foreclosure suit because they were in possession of the residence as month to month tenants.

2. Or. Rev. Stat. Sections 105.105-.160 do not violate the Equal Protection clause of the Fourteenth Amendment.

By providing the eviction procedure available to landlords under Or. Rev. Stat. §§ 105.105-.160, the State of Oregon has not created an unreasonable distinction and classification which violates the equal protection clause of the Fourteenth Amendment to the U. S. Constitution. Or. Rev. Stat. § 105.105 deprives the landlord of the right to forcibly retake possession

of real property rented or leased to a tenant, as a lessor of personal property may do. The landlord is required to obtain a legal determination of his right to possession. Or. Rev. Stat. §§ 105.110-.160 provide the landlord with a procedure to obtain a legal determination of his right to possession of real property without the delay of normal litigation, except where the tenant posts security for the payment of the rent accruing during the proceedings. Without the availability of such a procedure or such security requirements, the tenant could remain in the property rent free for a substantial period of time, and the landlord would have little chance to collect the unpaid rent, especially from an indigent tenant. Therefore, the statutory distinction is based upon reasonable grounds. In addition, the procedure is reasonable. The statute requires (1) that the landlord file a complaint in the district or circuit court of the county in which the property is located, (2) that the tenant be personally served with the complaint and a summons designating the time and place where the trial will be held, and (3) that a trial of the case be held before a judge or a jury at the request of either party. Also the tenant need not file a written answer to the complaint.

This Court has held that the Equal Protection clause of the Fourteenth Amendment does not prohibit different treatment of different groups so long as the classification of the group is not made on grounds which are wholly irrelevant to the objective of the legislation.[8] Since the landlord was deprived of

[8] *McGowan* v. *Maryland*, 366 U.S. 420, 425-6 (1961).

the right to retake possession of real property without a legal determination of his right to do so, it was necessary and reasonable that the landlord be provided with a quick procedure to obtain such a determination, or some assurance that he would be able to recover the rent accruing during the period of the proceedings, if the court determines that he is entitled thereto. Therefore, Or. Rev. Stat. §§ 105.105-.160 do not violate the Equal Protection clause of the Fourteenth Amendment.

3. Or. Rev. Stat. Sections 105.125, .135, and .140 do not violate the Due Process clauses of the Fifth and Fourteenth Amendments.

Or. Rev. Stat. § 105.125 sets forth the minimum allegations necessary to state a cause of action under Oregon's eviction statutes. The statute requires that a complaint set forth allegations describing the premises, stating that the tenant entered the premises with force or unlawfully holds the premises with force, and stating that the landlord is entitled to possession. The complaint must also contain a prayer for the relief requested.[9] The court in the proceeding below found that "[t]he pleadings required by the challenged statute are at least as informative as those required by the Federal Rules of Civil Procedure."[10]

The allegation required by Or. Rev. Stat. § 105.125 (3), that the tenant "unlawfully holds the premises

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[9] Or. Rev. Stat. § 16.210(2).

[10] Court's opinion page 4, Appendix to Appellants' Jurisdictional Statement page 4.

with force;" is not unreasonably vague and gives a tenant the adequate notice of the grounds for eviction guaranteed him by the Due Process clauses of the Fifth and Fourteenth Amendments to the U. S. Constitution. The term "unlawful holding by force" is defined by Or. Rev. Stat. § 105.115 as either failing to pay rent within 10 days after the date due, or remaining in the premises after expiration of a lease or after receipt of notice to vacate. It is common knowledge among tenants as well as landlords that either of the above conditions is a ground for eviction. Also, the tenant always has equal knowledge with the landlord of the relevant facts constituting the ground for eviction, that is, the tenant knows if he has not paid his rent, or if his lease has expired, or if he has been given statutory notice to vacate the premises.

The minimum allegations required by Or. Rev. Stat. § 105.125 adequately advise a tenant that his landlord is seeking to recover possession of the described property which the tenant possesses, and that the landlord bases his right to recover possession on either the tenant's failure to pay rent within 10 days after it is due or the termination of the tenancy by expiration of a lease or notice to vacate. Which of the two alternative grounds the landlord is asserting is within the knowledge of the tenant in every conceivable case.

Or. Rev. Stat. §§ 105.135 and .140 prescribe the period of time which must elapse, between the service of summons and the trial of the eviction action. Or.

Rev. Stat. § 105.135 provides for a two to four day period, and Or. Rev. Stat. § 105.140 provides for a continuance of the two to four day period for an additional two days without the posting of security, and for an unlimited continuance upon the condition that the tenant file an undertaking with security to effect that he will pay the landlord the rent accruing during the period of the requested continuance, if judgment is ultimately rendered against the tenant.

The statutes do not effectively limit the period to a maximum of six days, as appellants contend. A tenant can file a personal undertaking,[11] and deliver to the court as security, the rent which would accrue during the period of the continuance requested. The tenant must pay no more than he would have had to pay the landlord as rent had the eviction action not been filed, unless he requests a continuance for more than a month.

Appellants appear to concede that if the statute is interpreted and applied so as to require a tenant only to pay rent as it would otherwise fall due, the statute would not violate the Due Process clauses of the Fifth and Fourteenth Amendments. Appellants' contention that the statutes are interpreted and applied otherwise is incorrect and not supported by any evidence. Appellee has not filed an eviction action against appellants, nor have appellants requested an Oregon court to grant a continuance under Or. Rev. Stat. § 105.140. Since no court interpretations of the

[11] See Or. Rev. Stat. § 29.250.

statutes are available, the statutes must be interpreted so as to make them constitutional if possible.[12]

In addition, in determining the actual time which a tenant has to prepare a defense, the court must consider that prior to receipt of summons a tenant has at least an additional 10 days notice of eviction in the case of eviction for nonpayment of rent, or an additional 30 or more days notice in the case of termination of lease or notice to vacate. These periods are available to a tenant for the preparation of his defense. Where the tenant knows it is inevitable that his landlord will file an eviction action, and he knows why he has not paid his rent or is in possession after expiration of his lease or receipt of notice to vacate, the period of time is not so unreasonably short. The tenant is not deprived of sufficient time within which to adequately prepare his defense, and, therefore, the statutes do not violate the Due Process clauses of the Fifth and Fourteenth Amendments.

The Due Process clauses of the Fifth and Fourteenth Amendments require only that a party be given reasonable notice of the action filed against him and reasonable opportunity to appear and assert his defenses.[13] In determining whether the notice and opportunity to defend are reasonable, the court must consider the nature of the proceedings.[14]

In an eviction action the only question presented

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[12] *United States* v. *Harriss*, 347 U.S. 612, 618 (1953).
[13] See *Dohany* v. *Rogers*, 281 U.S. 362, 369 (1929).
[14] Id. at 369.

is whether the landlord is entitled to possession of the property. The only grounds which a landlord can assert are the tenant's failure to pay rent within 10 days after due, or the tenant's failure to vacate after the termination of lease or notice to vacate. The only defenses available are those relevant to the right to possession of the premises. The eviction action therefore presents very narrow factual issues and the proof is equally within the knowledge of and is equally available to the landlord and the tenant, and does not require any complex or difficult proof such as expert testimony, depositions, tests, studies, etc. In the light of these facts, the notice required by Or. Rev. Stat. § 105.125 is not so unreasonably vague as to deprive a tenant of reasonable notice of the claim against him, nor is the time period between service of summons and trial as prescribed by Or. Rev. Stat. §§ 105.135 and .140 so unreasonably short that a tenant is deprived of a reasonable opportunity to appear and present his defense thereto.

Appellants' reliance on *Sniadach* v. *Family Finance Corp.*[15] is misplaced. The Court there found that the mere withholding of a person's wages was a taking of property, and where the taking occurred without a hearing on the merits, the person was deprived of property without due process of law. The Oregon Eviction Statutes do not deprive a tenant of possession before a hearing on the merits of his right to remain in possession.

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[15] 395 U.S. 337 (1969).

4. Or. Rev. Stat. Section 105.160 does not violate the Due Process clause of the Fifth and Fourteenth Amendments.

Or. Rev. Stat. § 105.160 is not so unreasonable as to violate the Due Process clauses of the Fifth and Fourteenth Amendments to the U. S. Constitution. The statute requires as a condition for an appeal by a tenant that he file an undertaking to pay twice the rental value of the real property from the commencement of the case to the final judgment should the landlord prevail on the appeal. The statute does not require a corporate surety bond, a personal undertaking is sufficient.[16] Since a final judgment in an eviction action cannot include a judgment for rent or other damages, the requirement of such an undertaking is not so unreasonable as to violate the Due Process clauses of the Fifth and Fourteenth Amendments.[17] There is clearly a reasonable basis for placing this type of an appeal in a different category than other appeals in Oregon's judicial system.

This Court has noted probable jurisdiction in the case of *Sanks* v. *Georgia*, which is now pending.[18] While the Georgia eviction statutes which are being considered by the Court in that case are substantially different from Oregon's eviction statutes, both statutes require on an appeal by the tenant, an undertaking for twice the rental value of the property during the pendency of the appeal. The Court is apparently

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[16] See Or. Rev. Stat. § 29.250.
[17] *Scales* v. *Spencer*, 246 Or. 111, 424 P.2d 242 (1967).
[18] 395 U.S. 974 (1969).

considering the constitutionality of requiring such an undertaking, and consideration of the same question in this case is unnecessary.

CONCLUSION

Appellee respectfully submits that appellants' appeal be dismissed for failure to comply with the requirements of Rule 10 of this Court. In the alternative, appellee respectfully submits that the judgment of the District Court below should be affirmed on the ground that the questions presented are so unsubstantial as not to warrant oral argument and further consideration by this Court.

Respectfully submitted,

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APPENDIX "A"

FORCIBLE ENTRY AND WRONGFUL DETAINER STATUTES OF THE STATE OF OREGON

105.105. Entry to be lawful and peaceable only. No person shall enter upon any land, tenement or other real property unless the right of entry is given by law. When the right of entry is given by law the entry shall be made in a peaceable manner and without force.

105.110. Action for forcible entry or wrongful detainer. When a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and possession is held by force, the person entitled to the premises may maintain in the county where the property is situated an action to recover the possession thereof in the circuit court, district court or before any justice of the peace of the county.

105.115. Causes of unlawful holding by force. The following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(1) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after it is due under the lease or agreement under which he holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(2) When the lease by its terms has expired and has not been renewed, or when the tenant or person

in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

105.120. Notice necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent. (1) An action for the recovery of the possession of the premises may be maintained in cases provided in subsection (2) of ORS 105.115, when the notice to terminate the tenancy or to quit has been served upon the tenant or person in possession in the manner prescribed by ORS 91.110 and for the period prescribed by ORS 91.060 to 91.080 before the commencement of the action, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for a period of 90 days before the commencement of the action.

(2) Any person entering into the possession of real estate under written lease as the tenant of another may, by the terms of his lease, waive the giving of any notice required by this section.

(3) The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of premises before the expiration of any period for which the tenant or person has paid the rent of the premises in advance.

105.125. Complaint. In an action pursuant to ORS 105.110 it is sufficient to state in the complaint:

(1) A description of the premises with convenient certainty;

(2) That the defendant is in possession of the premises;

(3) That he entered upon the premises with force or unlawfully holds the premises with force; and

(4) That the plaintiff is entitled to the possession of the premises.

105.130. How action conducted. Except as provided in ORS 105.135 to 105.160, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

105.135. Service and return of summons. The summons shall be served and returned as in other actions. The service shall be not less than two or more than four days before the day of trial appointed by the court.

105.140. Continuance. No continuance shall be granted for a longer period than two days unless the defendant applying therefor gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant.

105.145. Judgment on trial by court. If the action is tried by the court without a jury, and after hearing the evidence it concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint

true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable.

105.150. Verdict and judgment on trial by jury. If the action is tried by a jury and they find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, they shall render a general verdict of not guilty; if true in part, they shall render a verdict setting forth the facts they find, and the court shall render judgment according to the verdict.

105.155. Form of execution. The execution, should judgment of restitution be rendered, may be in the following form:

State of Oregon,)
) ss.
County of .....)

To the sheriff or any constable of the county:

Whereas, a certain action for the forcible entry and detention, (or the forcible detention) of the following described premises, to wit: .....,
lately tried before the above entitled court, wherein ..... was plaintiff and ..... was defendant, judgment was rendered on the .....day of .....
A.D., ..., that the plaintiff .....have restitution

of the premises, and also that he recover the costs and disbursements in the sum of $_____;

In the name of the State of Oregon, you are, therefore, hereby commanded to cause the defendant and his goods and chattels to be forthwith removed from the premises and the plaintiff is to have restitution of the same. In the event the goods and chattels are not promptly removed thereafter by the defendant you are authorized and empowered to cause the same to be removed to a safe place for storage. You are also commanded to levy on the goods and chattels of the defendant, and make the costs and disbursements, aforesaid, and all accruing costs, and to make legal service and due return of this writ.

Witness my hand and official seal (if issued out of a court of record) this _____day of _____, A.D. _____.

_____

Justice of the peace, or clerk of the district or circuit court.

105.160. Additional undertaking on appeal. If judgment is rendered against the defendant for the restitution of the real property described in the complaint, or any part thereof, no appeal shall be taken by the defendant from the judgment until he gives, in addition to the undertaking now required by law upon appeal, an undertaking to the adverse party, with two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff if the judgment is affirmed on appeal of

twice the rental value of the real property of which restitution is adjudged from the commencement of the action in which the judgment was rendered until final judgment in the action.

APPPENDIX "B"

CODE OF THE CITY OF PORTLAND, OREGON

14.04.010. Offenses generally. The doing of any act or thing prohibited or the failing to do any act or thing commanded to be done in this code within the corporate limits of the city and within such other areas as may be specified in this code is hereby declared to be an offense against the public peace, safety, health, morals and general welfare of the people of the city.

14.08.010. Penalty for violation. Violation of any provision of this code is punishable, upon conviction, by a fine of not more than five hundred dollars, or by imprisonment not exceeding six months, or both. However, no greater penalty shall be imposed than the penalty prescribed by Oregon statute for the same act or omission.

29.04.010. Purpose. The purpose of this title is to provide minimum requirements for the protection of life, limb, health, property, safety and welfare of the general public and the owners and occupants of residential buildings.

29.04.020. Scope. (a) Application. The provisions of this title shall apply to all buildings or portions thereof, used, or designed, or intended to be used for human habitation. Such occupancies in existing buildings may be continued as provided in Section 24.02.100 subject to the provisions of this title prohibiting such occupancy.

Where any building or portion thereof is used or intended to be used as a combination apartment house-hotel, the provisions of this title shall apply to the separate portions as if they were separate buildings.

(b) Alteration. Existing buildings which are altered or enlarged shall be made to conform to this title insofar as the new work is concerned and in accordance with Sections 24.02.040-24.02.080.

(c) Relocation. Existing buildings which are moved or relocated shall be considered as new buildings and shall comply with all the requirements of this title.

29.04.030. Building inspections director to enforce title. The building inspections director is hereby authorized and directed to administer and enforce all the provisions of this title.

29.04.040. Right of entry. To the full extent permitted by law, upon presentation of proper credentials the building inspections director or his duly authorized representatives may enter at reasonable times any building, structure or premises in the city to perform any duty imposed upon him by this title.

29.04.050. Liability for maintenance. Every owner, or his agent, in addition to being responsible for maintaining his building in a sound structural condition, shall be responsible for keeping that part of the building or premises which he occupies or controls in a clean, sanitary and safe condition including the shared or public areas in a building containing

two or more dwelling units. Every owner shall, where required by this title, or other titles or ordinances of the city, furnish and maintain such approved sanitary facilities as required, and shall furnish and maintain approved devices, equipment or facilities for prevention of insect and rodent infestation, and where infestation has taken place, shall be responsible for the extermination of any insects, rodents or other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling. Every occupant of a dwelling unit or efficiency living unit, in addition to being responsble for keeping in a clean, sanitary and safe condition that part of the dwelling or dwelling unit or premises which he occupies and controls, shall dispose of all his rubbish, garbage and other organic waste in a manner required by code or ordinances of the city.

Every occupant shall, where required by this title, or other codes or ordinances of the city, furnish and maintain approved devices, equipment or facilities necessary to keep his premises safe and sanitary.

29.04.060. Interpretation. Whenever any person, who has been notified of noncompliance with this title or who has been ordered by the building inspections director to make any correction, to perform any act or to incur any expense, desires to question the interpretation of this title by the building inspections director, such person may apply to the housing advisory and appeal board for an interpretation of this title, or its application to any specific case or situation by

filing a request therefor in writing with the building inspections director together with a five dollar fee. The board shall by written decision interpret the intent of any provisions of this title in its application. Such interpretation shall be followed in applying provisions of this title.

29.04.070. Continuance of other penal provisions. The provisions of this title shall not be deemed to be in lieu of any other penal provisions of this title or ordinances of the city, and if any act or condition is prohibited in this title and in ordinances of the city, the prohibition in this title or ordinances shall continue and the penalties prescribed therein shall apply upon conviction of a violation of such other provision.

29.04.080. Reference to other titles. (a) The building regulations, which are referred to in various parts of this title, shall be the building regulations, Title 24.

(b) The planning and zoning regulations, which are referred to in various parts of this title shall be the planning and zoning regulations, Title 33.

29.04.090. Violations. It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in the city, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this title.

29.28.010. Substandard buildings. (a) Any build-

ing or portion thereof including any dwelling unit, efficiency living unit, guest room or suite of rooms in which there exists any of the following listed conditions shall be deemed and is hereby declared to be a substandard building:

(1) Deteriorated or inadequate foundations;

(2) Defective or deteriorated flooring or floor supports;

(3) Floor or floor supports of insufficient size to carry loads imposed or likely to be imposed with safety;

(4) Members of walls, partitions or other vertical supports that are split or that lean, list or are buckled due to defective material or deterioration;

(5) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety;

(6) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which have sagged, split or buckled due to defective material or deterioration;

(7) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that are of insufficient size to carry imposed loads with safety;

(8) Fireplaces or chimneys which list, bulge or are settled due to defective material or deterioration;

(9) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety;

(10) Electric wiring which is found to be overloaded, deteriorated or dangerous or to create a fire hazard;

(11) Plumbing which is inadequate or cross-connected or which permits syphonage or backflow, or which permits entry of sewer gases;

(12) Heating or ventilating equipment found to be unsafe whether from deterioration, faulty materials or workmanship, breakage or other causes;

(13) Faulty weather protection, including but not limited to deteriorated, crumbling or loose plaster, deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors; defective, broken, rotted, split or buckled exterior wall coverings or roof covering;

(14) Any other condition of a structure or part thereof which is found to constitute a fire hazard or a hazard to the health, safety or welfare of the occupants or of the public.

(b) Upon determining that such a condition exists, the building inspections director may order the owner, his agent or the occupant to correct such condition and may fix a time in the order within which the correction shall be made, and serve a copy thereof on the owner, his agent or the occupant and post a copy thereof on the building. It is unlawful for any person other than the building inspections director to deface or remove the posted notice.

(c) If the order of the building inspections direc-

tor is not complied with, he may proceed to enforce the penal provisions of this title or if the condition is found to be such that the structure is subject to demolition under the building regulations, the procedure set forth in said code for condemnation of a building shall be followed.

(d) Any building found to be substandard as set forth in this section hereby is declared to be a public nuisance, and maintenance thereof hereby is prohibited.